

CHARTER OAK FIRE INSURANCE COMPANY

NAIC COMPANY 25615

MARKET CONDUCT EXAMINATION REPORT
as of June 30, 2004

**COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**PREPARED BY INDEPENDENT CONTRACTORS
FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

**Charter Oak Fire Insurance Company
1 Tower Square
Hartford, CT 06183**

**MARKET CONDUCT
EXAMINATION REPORT
as of
June 30, 2004**

Prepared by

Gary L. Domer, CIE

James H. Daughan, CPCU, CIE, AIM

Independent Contract Examiners

April 29, 2005

The Honorable David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Rivera:

In accordance with Sections 10-1-203, C.R.S. and 10-3-1106, C.R.S., an examination of selected claims, underwriting and rating practices of the Charter Oak Fire Insurance Company's private passenger automobile business has been conducted. The Company's records were examined at the Home office at 1 Tower Sq., Hartford, CT 06183, and Regional Claim Office at 7600 East Orchard Rd., Greenwood Village, CO 80111. The examination covered a one-year period from July 1, 2003, to June 30, 2004.

A report of the examination of the Charter Oak Fire Insurance Company is, herewith, respectfully submitted.

Gary L. Domer, CIE

James H. Daughan, CPCU, CIE, AIM

Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF
Charter Oak Fire Insurance Company**

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
I. COMPANY PROFILE	5
II. PURPOSE AND SCOPE OF EXAMINATION	6
III. METHODOLOGY	8
IV. EXAMINATION REPORT SUMMARY	14
V. PERTINENT FACTUAL FINDINGS	15
1. Operations	16
2. Underwriting and Rating	21
3. Claims	31
VI. SUMMARY OF RECOMMENDATIONS	34
VII. EXAMINATION REPORT SUBMISSION	35

COMPANY PROFILE**CHARTER OAK FIRE INSURANCE COMPANY**

The Charter Oak Fire Insurance Company was incorporated on April 29, 1931, and commenced business on October 14, 1935, under the laws of the state of Connecticut. The company is wholly owned by The Travelers Indemnity Company, a wholly owned subsidiary of Travelers Insurance Group Holdings Inc., a wholly owned subsidiary of Travelers Property Casualty Corp.

Travelers Property Casualty Corp., a direct, wholly owned subsidiary of The St. Paul Travelers Companies, Inc., is a property-casualty insurance holding company engaged, through its subsidiaries, in two business segments: Commercial Lines and Personal Lines.

On April 2, 1996, Travelers Property Casualty Corp. purchased the property and casualty business of The Aetna Casualty and Surety Company and its property-casualty affiliates. On April 1, 2004, Travelers Property Casualty Corp. merged with The St. Paul Companies and is now known as The St. Paul Travelers Companies, Inc.

As of December 31, 2003, Charter Oak Fire Insurance Company had 7,216* Private Passenger Automobile policies in force in Colorado. Additionally, the Company reported \$10,569,000** in private passenger automobile and written premium in Colorado as of December 31, 2003. This represented a .36%** market share of all private passenger automobile insurance written in Colorado.

*Data as reported by the Company

**Data as reported in the Colorado Insurance Industry Statistical report

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law, Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report

The examination was governed by, and was performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered twelve months of the Company's operations, from July 1, 2003, to June 30, 2004.

File sampling was based on a review of claims, underwriting and rating files systematically selected from file runs provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file, any findings were noted on a comment form and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond and was requested to agree, disagree or otherwise justify the Company's noted action.

The examination report is a report by exception and much of the material reviewed is not addressed in the written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most instances where monetary values were involved. However, in instances where monetary values were generated by computer or other systematic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic or, when due to the sampling process, it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exception percentages less than five percent (5%) are also included.

The report addresses Private Passenger Automobile issues and contains information regarding exceptions to the Colorado Insurance Code. The examination included review of the following four (4) Company operations:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting and Rating
4. Claims

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's claim, complaint, underwriting and rating practices for private passenger automobile insurance to determine compliance with the Colorado insurance law.

Exhibit 1: Private Passenger Auto

Law	Subject
Section 10-1-205	Financial Examination Reports
Section 10-1-203	Authority, scope, and scheduling of examinations
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practice prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices
Section 10-3-1106	Power of Commissioner
Section 10-3-1107	Hearings
Section 10-3-1108	Orders
Section 10-3-1109	Penalty for violation of cease and desist orders
Section 10-4-401	Purpose-applicability
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-618	Unfair or discriminatory trade practices-legislative declaration
Section 10-4-619	Coverage compulsory
Section 10-4-620	Required Coverage
Section 10-4-621	Required Coverages are minimum
Section 10-4-622	Required provision for intrastate and interstate operation
Section 10-4-623	Conditions and exclusions
Section 10-4-624	Self-insurers
Section 10-4-625	Quarterly premium payments
Section 10-4-626	Prohibited reasons for non-renewal or refusal to write a policy

Section 10-4-627	Discriminatory standards-premiums-surcharges-proof of financial resp.
Section 10-4-628	Refusal to write-changes in-cancellation-non-renewal of policies
Section 10-4-629	Cancellation-renewal-reclassification
Section 10-4-630	Exclusion of named driver
Section 10-4-631	Insurers to file rate schedule
Section 10-4-632	Reduction in rates for drivers 55 years or older/drivers ed course
Section 10-4-633	Certification of policy and notice forms
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of autom insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.
Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete driver's education course - legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Regulation 1-1-6	Certification of forms
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 1-1-8.	Penalties And Timelines Concerning Division Inquires and Document Requests
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Ins. Scoring.
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Auto Accident Reparations Act (No Fault) Rules and Regulations.
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 5-2-12	Concerning Automobile Consumer Protections
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.

Company Operations and Management

The examiners reviewed Company management, implementation, quality controls, record retention, installment payment plans, form certification, and timely cooperation with the examination process.

Complaints

The examiners reviewed and compared the complaint log maintained by the Division of Insurance with the Company's complaint log to verify the accuracy of the Company's tracking system. Also, the examiners evaluated the Company's complaint handling methodology and reviewed the reasons for and disposition of, complaints.

Contract Forms and Endorsements

The following Private Passenger Automobile forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance.

Title	Form	Edition
Policy Jacket	PL-6000	3/87
Declarations Continuation/Reinstatement	PL-7782	11/94
Declarations	PL-7783	11/94
Declarations	PL-6001	3/87
Additional Insured	PL-6010	4/95
Amendment Endorsement	PL-6026	3/87
Amendment Endorsement -Temporary	PL-6027	3/87
Antique or Classic Car (Stated Amount Insurance)	PL-6009	3/87
Antique Auto –Limited Use	PL-6019	3/87
Auto Death Indemnity Coverage	PL-6028	3/87
Auto Loan Lease Coverage	PL-8198	3/95
Covered Property Coverage	PL-6008	3/87
Coverage Enhancement Endorsement	PL-6771	8/96
Coverage for Sound Receiving & Transmitting Equipment	PL-6006	3/90
Coverage for tapes Records or Other Devices	PL-6033	3/87
Exclusion of Occupants of Certain Vehicles	PL-6031	3/87
Extended Non-Owned Coverage for Named Individual	PL-6007	3/87
Federal Employees Using Autos In Government Business	PL-6002	3/87

General Change Endorsement-NO Premium Involved	PL-6004	3/87
General Change Endorsement- Premium Involved	PL-6003	3/87
Limited Coverage for Operators Under 25	PL-6029	3/87
Limits of Liability	PL-6024	3/87
Miscellaneous Type Vehicle Endorsement	PL-6013	3/87
Motor Home Rental Coverage	PL-6034	3/87
Named Non-Owner coverage	PL-6022	3/87
Notice to Third Party	PL-6018	3/87
Operation By Named Person Eliminated	PL-6032	3/87
Premium Financing Endorsement	PL-6017	3/87
Racing Exclusion	PL-6014	3/87
Repair or Replacement Collision Coverage	PL-6023	3/87
Snowmobile Endorsement	PL-6012	3/87
Special Increased Limits Endorsement	PL-6020	3/87
Symbol Numbers of Endorsements	PL-6021	3/87
Use on Ice Endorsement	PL-6016	3/87
Use on Water Endorsement	PL-6015	3/87
Amendment of Policy Provisions-Colorado	PL-6205	3/87
Coverage for tapes Records or Other Devices	PL-6033	6/04
Mass Merchandising—Colorado	PL-9781	3/99
Property Damage UM—Colorado	PL-6551	9/99
Summary Disclosure Form	PL-7513	7/03
Notice of Non-Renewal	PL-2908	6/03
Notice of Cancellation, Non-Payment	SC-20451	9/02
Notice of Cancellation, Non-Payment	PL-1074	11/90
Notice or Premium Increase/Reduction in Coverage	PL-1874	6/03
Important Notice (A.I.P.)	C-13442	8/69
Important Notice (A.I.P.)	PL-8403	12/95

CO UM Coverage Election of Reduced Limits/Rejection	PL-1929	7/03
CO UM Coverage Election of Reduced Limits/Rejection	QC-C054	7/03
Good Student Certification	300213	6-70
Notice of Cancellation—Colorado	PL-1875	6/03
Important Notice	PL-9042	4/97
Notice of Change of Coverage	PL-3347	6/01
Notice of Non-Renewal—Colorado	PL-10144	2/00

In Force Business /Cancellations/Nonrenewals/Surcharges

For the period under examination the examiners systematically selected the following underwriting samples to determine compliance with Colorado Insurance law.

Private Passenger Auto			
Review Lists	Population	Sample Size	Percentage to Population
In Force Business	7918	100	1
Non-renewals	147	50	34
Cancel Non Pay	275	50	18
Cancel in 59 days	111	50	45
Cancel after 59 days	9	9	100
Surcharges	823	50	6
Tort Conversions-Mid Term	52	50	96
Tort Conversions-Renewals	5467	100	2

Rating

The examiners reviewed rate and rule filings, statistical justifications, and methodology submitted to the Colorado Division of Insurance for the period under examination. This information was compared to a sample of in-force policies, rated by coverage, to determine compliance with base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

Claims

The examiners reviewed the company's claim handling procedures and the timeliness and accuracy of PIP payments.

Private Passenger Auto

Review Lists	Population	Sample	Percent to Population
Closed without payment	1230	50	4
PIP Paid Claims	374	50	13
All Other Paid Claims	2096	50	2

EXAMINATION REPORT SUMMARY

The examination resulted in eight (8) issues arising from the Company's apparent failure to comply with Colorado statutes and regulations that govern all property and casualty insurers operating in Colorado. These issues involved three (3) of the four (4) categories of Company operations examined as follows:

Company Operations and Management: In the area of company operations and management two (2) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be followed by the Company in the issuance, cancellation, and non-renewal of policies of insurance. It is recommended that the Company review operating and management practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations. The issues in this area are:

- Failure, in some cases, to report suspected insurance fraud.
- Failure, in some instances, to provide a quarterly payment plan.

Complaint Handling: In the area of complaint handling no compliance issues are addressed in this report.

Underwriting and Rating: In the area of underwriting and rating five (5) compliance issues are addressed in this report. These issues arose from Colorado statutory and regulatory requirements that must be complied with whenever policies are issued, canceled, non-renewed, premiums increased or decreased, or surcharged. It is recommended that the Company review its underwriting and rating practices and procedures and make the changes necessary to ensure future compliance with applicable statutes and regulations as to each issue.

- Failure, in some instances, to send notice of premium increase letters.
- Failure, in some cases, to charge rates filed with the Commissioner of Insurance.
- Failure, in some instances, to follow a filed rating plan.
- Failure, in some cases, to provide an acceptable reason for cancellation or non-renewal.
- Failure, in some instances, to retain records for Market Conduct Examinations.

Claims Handling: In the area of claims handling one (1) compliance issue is addressed in this report.

- Failure, in some instances, to timely pay PIP benefits.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance. Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

CHARTER OAK FIRE INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS
OPERATIONS AND MANAGEMENT

Issue A: Failure, in some cases, to report suspected insurance fraud.

Section 10-4-1003, C.R.S., Disclosure of information, states, in part: ...

(8)(a) Any person that has reason to believe that a fire loss may have been caused by other than accidental means, that any insurance claim or application for insurance coverage may be fraudulent, or that a fraudulent insurance act has been committed, may, and *any insurer that has reason to believe the same shall*, [emphasis added] furnish and disclose any relevant information in its possession concerning such loss, claim, or act to any insurer or authorized agency for the purpose of detecting, prosecuting, or preventing fraudulent insurance claims.

Colorado Insurance Regulation 6-5-1, Concerning the Reporting of Suspected Insurance Fraud promulgated pursuant to Sections 10-1-109 and 10-4-1003(8), C.R.S., states, in part:

B. Reporting Requirements

c. When any person or insurer has reason to believe that a fire loss might have been caused by other than accidental means or that any insurance claim may be fraudulent, then such person may, and such *insurer shall*, [emphasis added] notify an authorized agency. ...

d. When any person or insurer has reason to believe that any claim for insurance benefits of policy application is in whole or in part a fraudulent insurance act or contains a material misrepresentation or concealment or a material fact, then such person may, and such *insurer shall* [emphasis added] notify the Division of Insurance.

4. When to report? . . .

b. An insurer shall report the fraudulent insurance act at any time, but no later than sixty (60) days after the date its investigation is completed and facts are sufficient to establish a reasonable suspicion that a reportable act has occurred, or within sixty (60) days of the receipt of a judgment or settlement.

The company's Anti Fraud Plan, as filed with the Division of Insurance, states, in part: ...

C. SIU REFERRALS

1. Any member of the claim structure or underwriting structure who has reason to believe that an insured, claimant, or other parties who are not associated with the St. Paul Travelers Companies has submitted a fraudulent claim shall request an investigation by the Special Investigations Unit. ...

Within the period of examination, twenty-four (24) claim files were reported to the Company's Special Investigations Unit because of suspected fraud. Three (3) files involved automobile fire losses that were determined to be accidental. Of the remaining twenty-one (21) losses, two (2) remained suspicious following conclusion of the investigation by the Company's SIU staff. However, no reports were made to the Division of Insurance as required by Section 10-4-1003, C.R.S., and Colorado Insurance Regulation 6-5-1. Failure to report instances of suspected fraud may be a violation of Colorado Insurance law.

Recommendation #1:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Section 10-4-1003, C.R.S. and Colorado Insurance regulation 6-5-1. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented procedures to ensure future compliance with Colorado Insurance law in reporting suspected fraudulent acts.

Issue B: Failure, in some instances, to provide a quarterly payment plan.

Section 10-4-625, C.R.S., Quarterly premium payments, effective July 1, 2003, provides:

The commissioner shall issue rules establishing quarterly, semiannual, and annual premium payments for persons who are required to purchase insurance under this part 7. An insurer providing a plan for payments on a basis that is more frequent than quarterly need not also provide a quarterly payment plan. An insurer's plan for payments may provide for payments of an advance deposit premium.

Colorado Insurance Regulation 5-2-3, Auto Accident Reparations Act (No-Fault) Rules and Regulations, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S. provides, in part: ...

D. Installment Premium Payments

1. Each insurer continuing private passenger motor vehicle insurance coverage in conformity with the Colorado Automobile Reparations Act shall offer, for persons who are required to purchase insurance under Part 7 of Title 10, Article 4, C.R.S., a quarterly premium payment plan. An insurer, providing a plan for payments of premium on a basis that is more frequent than quarterly, need not also provide a quarterly payment plan.
2. Each insurer shall be required to file rules, methods or procedures to provide an installment premium payment plan.
3. An insurer's premium payment plan that is more frequent than quarterly may provide for payments of an advance deposit premium not greater than one month's premium.

Colorado Insurance Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of Section 10-1-109, C.R.S. provides, in part: ...

Section 5 Rules

A. Installment Premium Payments

1. Each insurer continuing private passenger motor vehicle insurance coverage in conformity with the Colorado Automobile Reparations Act shall offer, for persons who are required to purchase insurance under Part 6 of Title 10, Article 4, C.R.S., a quarterly premium payment plan. An insurer, providing a plan for payments of premium on a basis that is more frequent than quarterly, need not also provide a quarterly payment plan.
2. Each insurer shall be required to file rules, methods or procedures to provide an installment premium payment plan.
3. An insurer's premium payment plan that is more frequent than quarterly may provide for payments of an advance deposit premium not greater than one month's premium.

The Company's manual, Travelers' Account Bill System, (ABS); Colorado Personal Insurance Policies, states, in part: ...

Cancellation

Policyholders for whom we have issued a cancellation notice for non-payment of premium become *ineligible* [emphasis added] for installment billing and *must pay the account balance* [emphasis added] to continue coverage as follows: ...

Failure to provide a quarterly installment premium payment plan and requiring payment in full before reinstatement appears to be a violation of Colorado Insurance law.

Recommendation #2:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Section 10-4-625, C.R.S. and Colorado Insurance Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented procedures to ensure future compliance with Colorado Insurance law by providing at least a quarterly installment premium payment plan to all insureds.

PERTINENT FACTUAL FINDINGS

UNDERWRITING AND RATING

Issue C: Failure, in some instances, to send a notice of premium increase.

Section 10-4-629 C.R.S., Cancellation – nonrenewal – reclassification, effective July 1, 2003, states, in part: ...

- (1) Except in accordance with the provisions of this part 6, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 6, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 6.
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

Section 10-4-720, C.R.S., Cancellation – nonrenewal – reclassification states, in part:

- (1) Except in accordance with the provisions of this part 7, an insurer shall not cancel or fail to renew a policy of insurance that complies with this part 7, issued in this state, as to any resident of the household of the named insured, for any reason other than nonpayment of premium, or increase a premium for any coverage on any such policy unless the increase is part of a general increase in premiums filed with the commissioner and does not result from a reclassification of the insured, or reduce the coverage under any such policy unless the reduction is part of a general reduction in coverage filed with the commissioner or to satisfy the requirements of other sections of this part 7.
- (2) An insurer intending to take an action subject to the provisions of this section shall, on or before the thirtieth day before the proposed effective date of the action, send written notice by first-class mail of its intended action to the insured at the insured's last-known address. The notice shall be in triplicate and shall state in clear and specific terms, on a form that has been certified by the insurer and the insurer has filed a certification with the commissioner that such notice form conforms to Colorado law and any rules promulgated by the commissioner:

Policies Surcharged

Population	Sample Size	Number of Exceptions	Percentage to Sample
823	50	5	10%

An examination of fifty (50) policies, representing 6% of all policies surcharged by the Company in Colorado from July 1, 2003, through June 30, 2004, showed five (5) exceptions (10% of the sample) wherein the Company failed to send a notice of premium increase to the named insured.

Failure to send a notice of increased premium when surcharging policies may be a violation of Colorado Insurance law.

Recommendation #3:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-720 and 10-4-629, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented procedures to ensure future compliance with Colorado Insurance law when surcharging policies.

Issue D: Failure, in some cases, to charge the rates filed with the Commissioner of Insurance.

Section 10-4-405, C.R.S., Filing of rating information-certain coverages, provides, in part: ...

- (1) With respect to type I kinds of insurance as defined in section 10-4-401(3)(a), every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan, and every modification of any of the forgoing which it proposes to use in the state.
- (2)(a) *Every filing shall state the proposed effective date thereof* [emphasis added] and shall indicate character and extent of the coverage contemplated.

On April 13, 2004, the company filed a rate revision, filing No. 2004-05-AP-102 B, Code: AP1960, to be effective May 14, 2004, a combined proposed overall rate increase of 3.9%. The effective date of the rate increase was May 14, 2004.

The rate filing stated:

These rules and rates are applicable to all new business and renewal policies *effective* [emphasis added] on or after May 14, 2004. No policy written or effective prior to May 14, 2004, shall be endorsed or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and the pro-rata charge as of the date of such request, but in no event prior to May 14, 2004.

The Company indicated it intended the rate filing to read as follows: “These rules and rates are applicable to all new business and renewal policies on or after May 14, 2004.” The putative meaning of the intended statement was that the change should apply to all policies *processed* on or after May 14, 2004, rather than policies *effective* on or after May 14, 2004.

The examiners determined that 316 policies, with *effective dates* from May 14, 2004, to June 13, 2004, were issued at the (prior) 7/1/03 rates because they were processed prior to May 14, 2004, (as the Company intended) instead of being issued at the 5/14/04 rates *as filed*. Of these 316 policies, 20 policies included a vehicle with a Performance Surcharge Indicator and were, therefore, probably overcharged using the 7/1/03 rates rather than the 5/14/04 rates that were filed. The remainder (296) of the 316 policies would have been charged more if the 5/14/04 rates had been used and hence were undercharged.

Failure to use the rates on file with the Commissioner of Insurance may be a violation of Colorado Insurance law.

Recommendation #4:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Section 10-4-405, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented policies and procedures to assure future compliance with Colorado Insurance law regarding the use of rates and rating plans.

Issue E: Failure, in some instances, to follow a filed rating plan.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part: ...

- (1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance: ...

(II) Making or permitting any unfair discrimination between individuals of the same class or between neighborhoods within a municipality and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such contract, *or in any other manner whatever*; [emphasis added]

Section 10-4-405, C.R.S., Filing of rating information-certain coverages, provides, in part:

- (2) With respect to type I kinds of insurance as defined in section 10-4-401(3)(a), every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan, and every modification of any of the forgoing which it proposes to use in the state.

In Force Business

Population	Sample Size	Number of Exceptions	Percentage to Sample
7,918	100	5	5%

An examination of 100 policies, representing 1% of the Company's in force business in Colorado written from July 1, 2003, through June 30, 2004, showed five (5) exceptions (5% of the sample) in which the company failed to follow their filed rating plan.

Four (4) policies were placed in a higher rate class than the rate class for which they qualified because the agent, either intentionally or accidentally, classified the applicants incorrectly and the company failed to correct the agent's submission.

One (1) policy was purposely classified incorrectly by the agent and was thereby placed in a lower rate class than the rate class for which the risk qualified. The applicant qualified for, should have been written in, the Standard rate class but, because of the incorrect classification, was written in the Preferred rate class. This was done because the applicant was "close" to having a driving violation fall outside the three (3) year experience rating window which would qualify the applicant for a Preferred rate.

Recommendation #5:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Sections 10-4-405 and 10-3-1104, C.R.S. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented procedures to ensure future compliance with Colorado Insurance law when rating policies.

Issue F: Failure, in some cases, to provide an acceptable reason for cancellation and/or non-renewal.

Section 10-4-602, C.R.S., Basis for cancellation, states, in part: ...

A notice of cancellation of a policy shall be valid only if it is based on one or more of the following reasons:

- (a) Nonpayment of premium; or
- (b) The driver's license or motor vehicle registration of either the named insured or any operator either residing in the insured's household or who customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding its effective date; or
- (c) An applicant knowingly made a false statement on the application for insurance; or
- (d) An insured knowingly and willfully made a false material statement on a claim submitted under the policy.

Amended Regulation 5-2-3, Auto Accident Reparations Act (No-Fault) Rules And Regulations, promulgated by the Commissioner of Insurance under the authority of §§ 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part: ...

Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following; ...

- b. The previous producer no longer represents the company

Regulation 5-2-12, Concerning Automobile Insurance Consumer Protections, promulgated by the Commissioner of Insurance under the authority of §§ 10-4-601.5, 10-4-625, 10-4-628(4), and 10-1-109, C.R.S. states, in part: ...

Unacceptable reasons for refusal to renew a policy of automobile insurance include, but are not limited to the following; ...

- b. The previous producer no longer represents the company

Policies Non-Renewed

Population	Sample Size	Number of Exceptions	Percentage to Sample
147	50	3	6%

An examination of fifty (50) policies, representing 34% of all policies non-renewed by the Company in Colorado from July 1, 2003, through June 30, 2004, showed three (3) exceptions (6% of the sample) in which the company used an unacceptable reason (the producer no longer represents the company) for non-renewal.

Using the fact that a producer no longer represents the company as a reason for non-renewal may be a violation of Colorado Insurance law.

Policies cancelled after 59 days

Population	Sample Size	Number of Exceptions	Percentage to Sample
9	9	1	11%

An examination of nine (9) policies, representing 100% of all policies cancelled after fifty-nine (59) days from July 1, 2003, through June 30, 2004, showed one (1) exception (11% of the sample) in which the company used an improper reason for cancellation

A policy was cancelled for the following reason:

We are canceling your automobile policy because of the failure to provide the following information necessary for the acceptance or proper rating of your policy:

“No response to our request for additional information for (driver) the driver in the 3/27/04 loss.”

Canceling a policy that has been in force more than 59 days for failure to provide underwriting information may be a violation of Colorado Insurance law.

Recommendation #6:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Section 10-4-602, C.R.S. and Colorado Insurance Regulations 5-2-3 and 5-2-12. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented procedures to ensure future compliance with Colorado Insurance law when non-renewing or canceling policies.

Issue G: Failure, in some instances, to retain records for Market Conduct Examinations.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of Section 10-1-109(1), C.R.S. states, in part: . . .

Section 5. Policy Records

- A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition or additional exclusions form or exceptions to coverage. . . .
- B. (4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy.

Section 9. Format of Records . . .

- C. The maintenance of records in a computer-based format shall be archival in nature, so as to preclude the alteration of the record after the initial transfer to a computer format. Upon request of an examiner, all records shall be capable of duplication to a hard copy that is as legible as the original document. The records shall be maintained according to written procedures developed and adhered to by the insurer. The written procedures shall be made available to the commissioner's market conduct examiners in accordance with section 12.

In Force Business

Population	Sample Size	Number of Exceptions	Percentage to Sample
7918	100	5	5%

An examination of 100 policies, representing 1% of the Company's in force business written in Colorado from July 1, 2003, through June 30, 2004, showed five (5) exceptions (5% of the sample) in which the company failed to retain policy applications.

Policies Surcharged

Population	Sample Size	Number of Exceptions	Percentage to Sample
823	50	1	2%

An examination of fifty (50) policies, representing 19% of all policies surcharged by the Company in Colorado from July 1, 2003, through June 30, 2004, showed one (1) exception (2%) of the sample in which the Company failed to retain the notice of premium increase sent to the named insured.

PIP Paid Claims

Population	Sample Size	Number of Exceptions	Percentage to Sample
372	50	2	4%

An examination of fifty (50) claims, representing 13% of PIP claim files in Colorado from July 1, 2003, through June 30, 2004, showed two (2) claim files in which the Company failed to retain medical bills.

Failure to retain/maintain policy documents for Market Conduct Examinations may be a violation of Colorado Insurance law.

Recommendation #7:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Colorado Insurance Regulation 1-1-7. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has implemented procedures to ensure future compliance with Colorado Insurance law.

PERTINENT FACTUAL FINDINGS

CLAIMS

Issue H: Failure, in some instances, to timely pay PIP benefits.

Colorado Insurance Regulation 5-2-8, Timely payment of Personal Injury Protection benefits, promulgated by the Commissioner of Insurance under the authority of Sections 10-1-109, 10-4-704, 10-4-708(1.3) and 10-3-1110(1), C.R.S., effective November 1, 1997, amended September 1, 2000, provides, in part: ...

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S., provides that benefits under the coverages enumerated in Section 10-4-706, C.R.S., are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

Section 10-4-708(1), C.R.S., allows for the accumulation of claims expense for periods not exceeding one month and provides that benefits are not overdue if paid within 15 days after the end of a defined period of accumulation. An insurer is permitted by this statute to pay a bill within 15 days after the end of a defined accumulation period only when there is a reasonable likelihood that multiple providers are involved and more than one bill is received during the accumulation period.

C. Requirements Establishing Proof of the Fact and Amount of Expenses Incurred

1. Medical and Rehabilitative PIP benefits

In the usual case, for purposes of triggering the 30-day time period described in Section 10-4-708(1), C.R.S., the following documents are sufficient to establish reasonable proof of the fact and amount of the expenses incurred for covered medical and rehabilitative PIP benefits:

- a. A properly executed application for benefits from the PIP claimant; and
- b. An initial notice to the insurer from the provider of benefits which meets the requirements of Section 10-4-708.5, C.R.S. or a billing statement for the procedure or treatment which complies with Section 10-4-708.6, C.R.S., and includes pursuant to Section 10-4-708.5 the following:
 - (1) The name and address of the treating health care provider;
 - (2) The evaluation of diagnosis, and the medical procedure performed or the medical treatment provided; and
 - (3) An itemized statement of charges corresponding to the medical service or treatment provided along with corresponding dates of service.

PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
372	50	9	18%

An examination of fifty (50) claims, representing 13% of all PIP claims paid by the Company in Colorado, from July 1, 2003, through June 30, 2004, showed nine (9) exceptions (18% of the sample) in which at least one bill was not paid within the thirty (30) day regulatory standard.

Failure to pay PIP claims within the required thirty (30) day period may be a violation of Colorado insurance law.

Recommendation #8:

Within thirty (30) days the Company should demonstrate why it should not be considered to be in violation of Colorado Insurance Regulation 5-2-8. If the Company is unable to provide such documentation, the Company should be required to provide documentation demonstrating that it has reviewed all procedures related to the timeliness of claim handling and the documentation of claim files and has implemented all necessary changes to ensure compliance with Colorado insurance law.

**Market Conduct Examination
Summary of Issues/Recommendations Locator**

ISSUE	Rec. No.	Page No.
OPERATIONS & MANAGEMENT		
Issue A: Failure, in some cases, to report suspected insurance fraud.	1	18
Issue B: Failure, in some instances, to provide a quarterly payment plan.	2	20
UNDERWRITING AND RATING		
Issue C: Failure in some instances to send a notice of premium increase.	3	23
Issue D: Failure, in some cases, to charge rates filed with the Commissioner of Insurance.	4	25
Issue E: Failure, in some instances, to follow a filed rating plan.	5	26
Issue F: Failure, in some cases, to provide an acceptable reason for cancellation or non-renewal.	6	28
Issue G: Failure, in some instances, to retain records for Market Conduct Examinations.	7	30
CLAIMS		
Issue H: Failure, in some instances, to timely pay PIP benefits.	8	33

Independent Market Conduct Examiners

Gary L. Domer, CIE

James H. Daughan, CPCU, CIE, AIM

Participated in this examination and in the preparation of this report